IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10519 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

CHIEF OFFICER

Versus

HIRA BHOJA

Appearance:

1. Special Civil Application No. 10519 of 2001

MS SEJAL K MANDAVIA for Petitioner No. 1

MR BA VAISHNAV for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision:05-06/11/2001

ORAL JUDGEMENT

1. In this matter Mr.Vaishnav, learned advocate for the respondent has pointed out the order of this Court dated 24.10.2001 in Special Civil Application No.7629/2001 with Special Civil Application No.10059/2001

passed by my learned Brother Justice P.B.Majmudar. I have gone through the order of this Court.

2. Rule. Mr.Vaishnav, appears and waives service of rule on behalf of the respondent.

3. With the consent of both the parties, the matter is taken up for final hearing.

4. This petition has been filed by Keshod Municipality challenging the judgment and award dated 21.8.2001 passed by the Labour Court, Junagadh, in Reference (LCJ) No.259 of 1997 by which Shri Hira Bhoja respondent-workman was ordered to be reinstated in service with continuity of service and 20% backwages.

5. Ms.Mandavia, learned advocate for the petitioner submitted that the respondent has not served for the stipulated period of 240 days in the preceding year and, therefore, the Labour Court has committed an error apparent on the face of the record in coming to the conclusion that the concerned workman has served for more than 240 days and, therefore, his services could not have been terminated without following the appropriate procedure of law. However, the Labour Court has given detailed reasoning in the impugned award in coming to the conclusion that the concerned workman had served for more than 240 days in the preceding year. The Labour Court has also considered the fact that the Municipality had not placed on record any documentary evidence to justify their say that the concerned workman has not served for the aforesaid period.

6. After considering the various judgments and after considering the factual aspect of the matter, the aforesaid finding of fact was given by the Labour Court. The said finding, in my view, which is based on the evidence on record, cannot be interfered with by this Court in a petition under Article 226/227 of the Constitution of India. In any case, it cannot be said that the aforesaid finding is contrary to and inconsistent with the evidence on record, especially when the Nagarpalika failed to prove any satisfactory evidence before the Tribunal to justify their say that the concerned workman had not served for the stipulated period. It is not in dispute that the Nagarpalika has not produced any Muster Roll or any documentary evidence for dislodging the say of the workman. In that view of the matter, so far as the order of reinstatement is concerned, the same is not required to be interfered with.

7. Ms.Mandavia, learned advocate for the petitioner further submitted that it is not a case in which back wages could have been given to the concerned workman. She submitted that the concerned workman was serving as a daily rated employee and as and when any need was there, he was called for services. Considering the facts and circumstances of the case, therefore, I am of the opinion that this is not a case in which award of backwages could have been passed by the Labour Court especially when the concerned workman was appointed only on daily rated basis and as per the requirement of the department. The award of the Labour Court is accordingly modified to the said extent in so far as payment of back wages is concerned. Accordingly, the order of reinstatement is confirmed. The Nagarpalika is directed to reinstate the concerned workman forthwith and, in any case, within a period of two weeks from today.

8. So far as the order of backwages is concerned, the said award is set aside. It is clarified that the concerned workman will be entitled to his regular salary from the date of the order of the Labour Court and whatever amount is required to be paid to him on that basis, should be paid to him, preferably within a period of one month from today. It is clarified that so far as the rest of the order of the Labour Court is concerned, the same is confirmed and the respondent will be required to be reinstated on his original post as per the direction given by the Labour Court in the award, with continuity of service, except payment of backwages, which is awarded by the Labour Court.

9. The petition is partly allowed to the aforesaid extent. Rule is made absolute to the aforesaid extent with no order as to costs.

(K.M. Mehta, J.)

syed/